



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

Docket No. USCG-2015-0940

RIN 1625-AA09

Drawbridge Operation Regulation; Indian Creek, Miami Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the operating schedule that governs the 63rd Street Bridge across Indian Creek, mile 4.0, at Miami Beach, FL. This rule implements restrictions that allow the bridge to remain closed during peak vehicle traffic times. Bridge openings during peak vehicle traffic times cause major traffic jams that may be avoided without negatively impacting vessel traffic on the Indian Creek. Modifying the bridge operating schedule will reduce major vehicle traffic issues during rush hour times.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2015-0940. In the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-

mail Mr. Rod Elkins with the Coast Guard; telephone 305-415-6989, e-mail

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SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On February, 18, 2016, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; Indian Creek, Miami Beach, FL in the Federal Register (81 FR 8168). We received 508 comments on this rule.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499.

The 63rd Street Bridge across Indian Creek, mile 4.0, at Miami Beach, Florida is a single leaf bascule bridge. It has a vertical clearance of 11 feet at mean high water in the closed position and a horizontal clearance of 50 feet. Presently, in accordance with 33 CFR 117.5, the 63rd Street Bridge is required to open on signal for the passage of vessels. Traffic on the waterway includes both commercial and recreational vessels.

The City of Miami Beach and Miami Dade County determined through bridge studies, traffic logs, and public meetings that restricting bridge openings during peak traffic hours will significantly reduce vehicular traffic congestion. Based on this determination, the City of Miami Beach requested this action to alleviate additional traffic congestion created

by bridge openings during peak hours.

In addition to changing the schedule to allow for limited openings during the regular work week, the Coast Guard is making a regulatory change that will apply during the annual boat show. Every year in mid-February the City of Miami Beach hosts the Yacht and Brokerage Show which creates unusually high vehicle and vessel traffic during the weeks before and after the show. The Coast Guard typically issues temporary deviations to the 63rd Street Bridge operations that help balance vessel and vehicle needs during those times. The Coast Guard is adopting the annual temporary deviation as part of this bridge regulation. The bridge owner, Florida Department of Transportation concurs with this Final Rule change.

IV. Discussion of Comments, Changes and the Final Rule

There were 508 comments received concerning the proposed rule. Of these comments, 497 were in favor of the proposed rule. Eight comments recommended various additional closure times that place more restrictions on bridge openings and do meet the reasonable needs of navigation. Two comments recommended openings on the hour and half hour at all times of day. The Coast Guard did not adopt these proposals because they are less restrictive than necessary to balance the needs of vehicle traffic during peak travel hours of the day and more restrictive than necessary to accommodate the reasonable needs of maritime navigation outside times of increased vehicle traffic. One comment recommended placing a toll system for openings on the bridge. This rulemaking seeks to set an operating schedule that will balance the needs of vehicle traffic with the reasonable needs of navigation. Therefore, the Coast Guard did not accept this proposal because it is outside the scope of this rulemaking.

The Coast Guard is adding §117.293 as proposed without change.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protesters.

A. Regulatory Planning and Review

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the ability that vessels can still transit the waterway during scheduled openings. Additionally, vessels that are capable of transiting under the bridge in the closed position, may do so at any time.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received zero comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which might be small entities: the owners or operators of vessels that require more than eleven feet vertical clearance that need to transit the bridge during daytime closure periods. Vessels will still be allowed to transit this waterway at all times if they can clear without an opening, or at the specified times if they need the bridge open. This change in operating schedule will still meet the reasonable needs of navigation while taking into account other modes of transportation.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f), and have made a determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule simply promulgates the operating regulations or procedures for drawbridges. This action is categorically excluded from further review, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the “FOR FURTHER INFORMATION CONTACT” section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security
Delegation No. 0170.1.

2. Add §117.293 to read as follows:

§ 117.293 Indian Creek.

The draw of the 63rd Street Bridge, Indian Creek mile 4.0, at Miami Beach, shall
open on signal except as follows:

(a) From 7 a.m. to 7 p.m., Monday through Friday except Federal holidays, the draw
need open only on the hour and half-hour.

(b) From 7:10 a.m. to 9:55 a.m. and 4:05 p.m. to 6:59 p.m., Monday through Friday
except Federal holidays, the draw need not open for the passage of vessels.

(c) In February of each year during the period seven days prior to the City of Miami
Beach Yacht and Brokerage Show and the four days following the show, from 10 a.m. to 4
p.m., the bridge need not open except for 10 minutes at the top of the hour. At all other times
the bridge shall operate on its normal schedule.

Dated: June 2, 2016

S. A. Buschman,

Rear Admiral, U.S. Coast Guard,

Commander, Seventh Coast Guard District

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